

Practitioner's Docket No. KDC-9659

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Anticipated Classification of this application:

Class \_\_\_\_\_ Subclass \_\_\_\_\_

\* \* \*

Application No.: 08 / 618,252

PRIOR APPLICATION Examiner: E. Marcelo

Art Unit: 3503

Box FWC  
Assistant Commissioner for Patents  
Washington, D.C. 20231

EH658279130US

**FILE WRAPPER CONTINUING APPLICATION (FWC) TRANSMITTAL  
(37 C.F.R. 1.62)**

**WARNING:** This form cannot be used where the parent case may not be abandoned because the filing of a request under the FWC procedure "will be considered to be a request to expressly abandon the prior application as of the filing date granted to the continuing application." 37 C.F.R. 1.62(g).

**WARNING:** See 37 C.F.R. 1.62(a).

**WARNING:** The filing of an application at the United States stage of an international application requires an oath or declaration. 37 C.F.R. 1.61(a)(4).

**WARNING:** The claims of this new application may be finally rejected in the first Office action where all claims of the new application are drawn to the same invention claimed in the earlier application and would have been properly finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. MPEP § 706.07(b).

**WARNING:** An application under 37 C.F.R. 1.62 is filed by making changes by amendment to the prior application, as it exists at the time of the filing of this FWC, and not by filing a new application. 37 C.F.R. 1.62(e).

**WARNING:** Filing under 37 C.F.R. 1.62 is permitted only if filed by the same or less than all the inventors named in the prior application. 37 C.F.R. 1.62(a).

**CERTIFICATION UNDER 37 C.F.R. 1.10\***  
(Express Mail label number is mandatory.)  
(Express Mail certification is optional.)

I hereby certify that this FWC Transmittal and the documents referred to as attached therein are being deposited with the United States Postal Service on this date November 12, 1997, in an envelope as "Express Mail Post Office to Addressee," mailing Label Number EH658279130US, addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231.

Sharon A. Herman

(type or print name of person mailing paper)



Signature of person mailing paper

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

**\*WARNING:** Each paper or fee filed by "Express Mail" **must** have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

**WARNING:** "No copy of the prior application or new specification is required. The filing of such a copy or specification will be considered improper, and a filing date as of the date of deposit of the request for an application under this section will not be granted to the application unless a petition with the fee set forth in § 1.17(i) is filed with instructions to cancel the copy or specification." 37 C.F.R. 1.62(e).

**WARNING:** File wrapper continuing procedure filings can only be based on a prior complete application as defined by § 1.51(a)(i), and not a prior complete provisional application as defined by § 1.51(a)(2).

This is a request for a filing under the file wrapper continuing application procedure (37 C.F.R. 1.62), for a

- ☒ continuation  
☐ divisional  
☐ continuation-in-part (for oath or declaration, see III below)  
Attached is an amendment for added subject matter  
☐ continuing application to permit consideration of an information disclosure statement under 37 C.F.R. 1.97.

**NOTE:** See 37 C.F.R. 1.62(a) for definition of filing date. The prior application under 37 C.F.R. 1.62(a) must be ". . . a prior complete application," as defined in 37 C.F.R. 1.51(a)(1).

#### PARTICULARS OF PRIOR NONPROVISIONAL APPLICATION

**WARNING:** File wrapper continuing procedure filings can only be based on a prior complete application as defined by § 1.51(a)(1), and not a prior complete provisional application as defined by § 1.51(a)(2). 37 C.F.R. 1.62(a).

- A. Application No. 0 8 / 618,252 filed 3/18/96  
Date
- B. Title (as originally filed TRACK SUPPORTED WINCH AND METHOD OF MAKING  
and as last amended) THE SAME
- C. Name of applicant(s) (as originally filed and as last amended) and current correspondence address of applicant(s)

1. FULL NAME OF INVENTOR	FAMILY NAME  Hunt	FIRST GIVEN NAME  George	SECOND GIVEN NAME  T.
RESIDENCE & CITIZENSHIP	CITY  Deatsville	STATE OR FOREIGN COUNTRY Alabama	COUNTRY OF CITIZENSHIP  U.S.A.
POST OFFICE ADDRESS	POST OFFICE ADDRESS  414 Nummy Rd	CITY  Deatsville	STATE & ZIP CODE/COUNTRY  Alabama 36022 U.S.A.
2. FULL NAME OF INVENTOR	FAMILY NAME	FIRST GIVEN NAME	SECOND GIVEN NAME
RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP
POST OFFICE ADDRESS	POST OFFICE ADDRESS	CITY	STATE & ZIP CODE/COUNTRY
3. FULL NAME OF INVENTOR	FAMILY NAME	FIRST GIVEN NAME	SECOND GIVEN NAME
RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP
POST OFFICE ADDRESS	POST OFFICE ADDRESS	CITY	STATE & ZIP CODE/COUNTRY

(FWC [4-2]—page 3 of 13)

The above identified application, in which no payment of issue fee, abandonment of (other than where the above identified application was abandoned under 37 C.F.R. 1.313(b)(5) to permit consideration of an information disclosure statement under 37 C.F.R. 1.97), or termination of proceedings has occurred, is hereby expressly abandoned as of the filing date of this new application. Please use all the contents of the prior application file wrapper, including the drawings, as the basic papers for the new application.

It is understood that secrecy under 35 U.S.C 122 is hereby waived to the extent that if information or access is available to any one of the applications in the file wrapper of a 37 C.F.R. 1.62 application, be it either this application or a prior application in the same file wrapper, the PTO may provide similar information or access to all the other applications in the same file wrapper.

## II. Inventorship statement

NOTE: "If the continuation, continuation-in-part, or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation, continuation-in-part, or divisional application." 37 C.F.R. 1.62(a).

NOTE: "In the case of a continuation-in-part application which adds and claims additional disclosure by amendment, an oath or declaration as required by § 1.63 must be filed. In those situations where a new oath or declaration is required due to additional subject matter being claimed, additional inventors may be named in the continuing application. In a continuation or divisional application which discloses and claims only subject matter disclosed in a prior application, no additional oath or declaration is required and the application must name as inventors the same or less than all the inventors in the prior application." 37 C.F.R. 1.60(c).

(complete applicable item (a), (b) and/or (c) below)

- (a) ☒ This application discloses and claims only subject matter disclosed in the prior application whose particulars are set out above and the inventor(s) in this application are
- ☒ the same.
- ☐ less than those named in the prior application. It is requested that the following inventor(s) identified above for the prior application be deleted:

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(type name(s) of inventor(s) to be deleted)

- (b) ☐ This application discloses and claims additional disclosure by amendment and a new declaration or oath is being filed. With respect to the prior application whose particulars are set out above, the inventor(s) in this application are
- ☐ the same.
- ☐ Add the following additional inventor(s).

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(type name of inventor(s) to be added)

- (c) The inventorship for all the claims in this application is
- ☒ the same.
- ☐ not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made, is submitted.

### III. Declaration or oath

#### A. Continuation or divisional

☒ None required.

#### B. Continuation-in-part

☐ Attached.

Executed by

*(check all applicable items)*

- ☐ inventor(s).
- ☐ legal representative of inventor(s). 37 C.F.R. 1.42 or 1.43.
- ☐ joint inventor or person showing a proprietary interest for inventor who refused to sign or cannot be reached. 37 C.F.R. 1.47;

☐ This is the petition required by 37 C.F.R. 1.47 and the statement required by 37 C.F.R. 1.47 is also attached.  
*(See item VIII below for fee.)*

☐ Not attached.

☐ Application is made by a person authorized under 37 C.F.R. 1.41(c) on behalf of all of the above named applicant(s).  
*(The declaration or oath, along with the surcharge required by 37 C.F.R. 1.16(e) can be filed subsequently.)*

☐ Attached is a showing that the filing is authorized.  
*(Not required unless called into question. 37 C.F.R. 1.41(d))*

### IV. Identification of Amendment Being Filed, Claims for Further Prosecution, and for Fee Charge

**WARNING:** "The claims of a new application may be finally rejected in the first Office action in those situations where (1) the new application is a continuing application of, or a substitute for, an earlier application, and (2) all the claims of the new application (a) are drawn to the same invention claimed in the earlier application, and (b) would have been properly finally rejected on the grounds of art of record in the next Office action if they had been entered in the earlier application." MPEP § 706.07(b).

☒ The claims for further prosecution and the fees to be charged are to be based on the number of claims remaining as a result of the:

☒ attached preliminary amendment.

☐ the unentered amendment filed under 37 C.F.R. 1.116 in the prior application, which is now repeated.

☐ the claims as on file in the prior application.

## V. Fee Calculation (37 C.F.R. 1.16)

NOTE: The filing fee for a continuation, continuation-in-part, or divisional application is based on the number of claims remaining in the application after entry of any preliminary amendment and entry of any amendments under 37 C.F.R. 1.116 unentered in the prior application which is requested to be entered in this FWC application. 37 C.F.R. 1.62.

CLAIMS FOR FEE CALCULATION								
Number Filed		Number Extra		Rate	Basic Fee 37 C.F.R. 1.16(a) \$790.00			
Total Claims								
(37 C.F.R. 1.16(c))	7	-	20	=	-0-	×	\$ 22.00	-0-
Independent Claims								
(37 C.F.R. 1.16(b))	2	-	3	=	-0-	×	\$ 82.00	-0-
Multiple dependent claim(s), if any								
(37 C.F.R. 1.16(d))						+	\$270.00	

☐ The fee for extra claims is not being paid at this time.

Filing fee calculation \$ 790.00

NOTE: If the fees for extra claims are not paid on filing they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Patent and Trademark Office in any notice of fee deficiency. 37 C.F.R. 1.16(d).

## VI. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment

NOTE: Where it is possible that the claims on file will give rise to a first action final for this continuation application and for some reason an amendment cannot be filed promptly (e.g., experimental data is being gathered), it may be desirable to file a petition for suspension of prosecution for the time necessary.

(check the next item, if applicable)

☐ There is provided herewith a Petition to Suspend Prosecution for the time Necessary to File an Amendment (New Application Filed Concurrently).

## VII. Small Entity Statement

☒ A verified statement that this is a filing by a small entity is attached.

**WARNING:** "Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established. A nonprovisional application claiming benefit under 35 U.S.C. 119(e), 120, 121 or 365(c) of a prior application may rely on a verified statement filed in the prior application if the nonprovisional application includes a reference to a verified statement in the prior application or includes a copy of the verified statement filed in the prior application if status as a small entity is still proper and desired." 37 C.F.R. § 1.28(a).

(complete the following, if applicable)

☒ Status as a small entity was claimed in prior application  
08 / 618,252, filed on 3/18/96, from which benefit is being  
claimed for this application under:

35 U.S.C. ☒ 120,  
☐ 121,  
☐ 365(c),

and which status as a small entity is still proper and desired.

☒ A copy of the verified statement in the prior application is included.

Reduced filing fee calculation (50% of above) \$ 395

NOTE: See 37 C.F.R. 1.28(a).

Any excess of the full fee paid will be refunded if a verified statement and a refund request are filed within 2 months of the date of timely payment of a full fee then the excess fee paid will be refunded on request. 37 C.F.R. 1.28(a).

### VIII. Fee Payment Being Made at This Time

#### Not attached

☐ No filing fee is submitted.  
(This and the surcharge required by 37 C.F.R. 1.16(e) can be paid subsequently.)

#### Attached

<input checked="" type="checkbox"/> filing fee	\$ 395
<input type="checkbox"/> recording assignment (\$40.00; 37 C.F.R. 1.21(h)). For payment of fee see item XIV below.	\$
<input type="checkbox"/> petition fee for filing by other than all the inventors or person not the inventor where inventor refused to sign or cannot be reached (\$130.00; 37 C.F.R. 1.47 and 1.17(h))	\$
<input type="checkbox"/> processing and retention fee (\$130.00; 37 C.F.R. 1.53(d) and 1.21(l))	\$

NOTE: 37 C.F.R. 1.21(l) establishes a fee for processing and retaining any application that is abandoned for failing to complete the application pursuant to 37 C.F.R. 1.53(d) and this, as well as the changes to 37 C.F.R. 1.53 and 1.78, indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee must be timely paid or the processing and retention fee in § 1.21(l) must be paid within 1 year from the notification under § 1.53(d).

Total fees enclosed \$ 395

## IX. Method of Payment of Fees

- ☒ Attached is check in the amount of \$ 395 .
- ☐ Charge Account No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ .
- ☐ A duplicate of this request is attached.

**NOTE:** Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. 1.22(b).

## X. Authorization to Charge Additional Fees

**WARNING:** If no fee payment is made at this time, this item should not be completed.

**WARNING:** Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claim charges are authorized.

- ☒ The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the entire pendency of this application to Account No. 25-0115 :

- ☒ 37 C.F.R. 1.16(a), (f) or (g) (filing fees)
- ☐ 37 C.F.R. 1.16(b), (c) and (d) (presentation of extra claims)

**NOTE:** Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.

- ☐ 37 C.F.R. 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)
- ☐ 37 C.F.R. 1.17 (application processing fees)

**WARNING:** While 37 C.F.R. 1.17(a), (b), (c) and (d) deal with extensions of time under § 1.136(a), this authorization should be made only with the knowledge that: "Submission of the appropriate extension fee under 37 C.F.R. 1.136(a) is to no avail unless a request or petition for extension is filed" (Emphasis added). Notice of Nov. 5, 1985 (1060 O.G. 27).

- ☐ 37 C.F.R. 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. 1.311(b))

**NOTE:** Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the Notice of Allowance. 37 C.F.R. 1.311(b).

See 37 C.F.R. 1.28(b).

## XI. Instructions as to Overpayment

- ☒ Credit Account No. 25-0115
- ☐ Refund



## XII. Priority—35 U.S.C. 119(a)-(d)

- ☐ Priority of Application No. \_\_\_\_\_ / \_\_\_\_\_ filed on \_\_\_\_\_  
in \_\_\_\_\_ is claimed under 35 U.S.C. 119.  
Country \_\_\_\_\_
- ☐ The certified copy has been filed on \_\_\_\_\_ in prior U.S. applica-  
tion Serial No. 0 / \_\_\_\_\_, which prior application was filed on  
\_\_\_\_\_
- ☐ Certified copy will follow.

## XIII. Relate Back

**WARNING:** If an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. 120, 121 or 365(c), the 20-year term of that application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. 120, 121 or 365(c). (35 U.S.C. 154(a)(2) does not take into account, for the determination of the patent term, any application on which priority is claimed under 35 U.S.C. 119, 365(a) or 365(b).) For a c-i-p application, applicant should review whether any claim in the patent that will issue is supported by an earlier application and, if not, the applicant should consider canceling the reference to the earlier filed application. The term of a patent is not based on a claim-by-claim approach. See Notice of April 14, 1995, 60 Fed. Reg. 20,194, at 20,205.

**NOTE:** "Any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(a))." 37 C.F.R. § 1.78(a)(2).

(complete the following, if applicable)

- ☒ Amend the specification by inserting, before the first line, the sentence:

### A. 35 U.S.C. 119(e)

**NOTE:** "Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number)." 37 C.F.R. § 1.78(a)(4).

**WARNING:** While this application under 37 C.F.R. § 1.62 cannot be a file wrapper continuation application of a provisional application, the nonprovisional application giving rise to this FWC filing could claim the benefit of a provisional application.

- ☐ "This application claims the benefit of U.S. Provisional Application(s) No(s).:

APPLICATION NO(S).:

FILING DATE

\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ "

**B. 35 U.S.C. 120, 121 and 365(c)**

NOTE: "Any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(a))." 37 C.F.R. § 1.78(a)(2).

- ☒ "This application is a
- ☒ continuation
  - ☐ divisional
  - ☐ continuation-in-part

of copending application(s)

- ☒ Serial Number 08 / 618,252 filed on 3/18/96 "
- ☐ International Application \_\_\_\_\_ filed on \_\_\_\_\_ and which designated the U.S."

NOTE: The proper reference to a prior filed PCT application that entered the U.S. national phase is the U.S. serial number and the filing date of the PCT application that designated the U.S.

**XIV. Assignment**

☒ The prior application is assigned of record to Kinedyne Corporation

☐ An assignment of the invention to \_\_\_\_\_

is attached. A separate ☐ "COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION" or ☐ FORM PTO 1595 is also attached.

NOTE: "If an assignment is submitted with a new application, send two separate letters—one for the application and one for the assignment." Notice of May 4, 1990 (1114 O.G. 77-78).

**XV. Power of Attorney**

The power of attorney in the prior application is to

Duncan F. Beaman

Attorney

18,235

Reg. No.

- a. ☒ The power appears in the original papers in the prior application.
- b. ☐ The power does not appear in the original papers, but was filed on \_\_\_\_\_.
- c. ☐ A new power has been executed and is attached.
- d. ☐ Address all future communications to:

(item d may only be completed by applicant, or attorney or agent of record.)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Reg. No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Tel. No.

#### **XVI. Maintenance of Copendency of Prior Application**

*(this item must be completed and the necessary papers filed in the prior application, if the period set in the prior application has run)*

- ☐ A petition, fee and response has been filed to extend the term in the pending prior application until \_\_\_\_\_.

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the continuation application. Notice of Nov. 5, 1985 (1060 O.G. 27).

- ☐ A copy of the petition for extension of time in the prior application is attached.

#### **XVII. Conditional Petitions for Extension of Time in Prior Application**

*(complete this item and file conditional petition in prior application, if previous item is not applicable)*

- ☒ A conditional petition for extension of time is being filed in the pending prior application

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the continuation application. Notice of Nov. 5, 1985 (1060 O.G. 27).

- ☒ A copy of the conditional petition for extension of time in the prior application is attached.

#### **XVIII. Abandonment of Prior Application**

- ☒ Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application. At the same time, please add the words "now abandoned" to the amendment to the specification set forth in XIII above.

NOTE: According to the Notice of May 13, 1983 (103 TMOG 6-7), the filing of a continuation or continuation-in-part application is a proper response with respect to a petition for extension of time or a petition to revive and should include the express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application.

NOTE: "A registered attorney or agent acting under the provisions of § 1.34(a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application. . . ." 37 C.F.R. 1.138.

#### **XIX. Information Disclosure Statement**

- ☐ Submitted herewith is an Information Disclosure Statement.

## XX. Assignee Certification

**WARNING:** When an assignee files a continuation or divisional application (under 37 C.F.R. 1.53, 1.60 or 1.62), reference may be made to a statement filed under 37 C.F.R. 3.73(b) in the parent application or a copy of that statement may be filed. A newly executed statement under 37 C.F.R. 3.73(b) must be filed when a continuation-in-part application is filed by an assignee. Notice of April 30, 1993, 1150 O.G. 62-64.

(complete the following, if the assignee is signing below)

- ☐ This is a ☐ continuation ☐ divisional application and the statement under 37 C.F.R. 3.73(b)
- ☐ has been filed in the parent application.
- ☐ A copy of the previously filed statement in the parent application is attached.
- ☐ This is a continuation-in-part application and a "CERTIFICATE UNDER 37 C.F.R. 3.73(b)" is attached.

\_\_\_\_\_  
(type or print name of person signing declaration)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
P.O. Address of Signatory

(if applicable)

Tel. No.: (       )

Reg. No.:

Customer No.

- ☐ Inventor
- ☐ Assignee of complete interest
- ☐ Person authorized to sign on behalf of assignee
- ☐ Practitioner of record
- ☐ Filed under Rule 34(a)
- Registration No.: \_\_\_\_\_

(complete the following, if applicable)

\_\_\_\_\_  
(type name of assignee)

\_\_\_\_\_  
Address of assignee

\_\_\_\_\_  
Title of person authorized to sign on behalf of Assignee



A/FWC

JCS51 U.S. PTO  
11/12/97

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: George T. Hunt

Serial No: 0 /

Group No.:

Filed:

Examiner:

For: TRACK SUPPORTED WINCH AND METHOD OF MAKING THE SAME

Commissioner of Patents and Trademarks

Washington, D.C. 20231

EXPRESS MAIL CERTIFICATE

"Express Mail" label number EH658279130US

Date of Deposit November 12, 1997

I hereby certify that the following *attached* paper or fee

File Wrapper Continuing Application (FWC) Transmittal  
Verified Statement Claiming Small Entity Status (previously filed)  
Preliminary Amendment (9 pages)  
One (1) sheet of drawing  
Conditional Petition and Fee for Extension of Time (copy) (in  
duplicate)  
Check \$395.00  
Postcard

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Sharon A. Herman

(Typed or printed name of person mailing paper or fee)

*Sharon A. Herman*

(Signature of person mailing paper or fee)

NOTE: **Each** paper must have its own certificate and the "Express Mail" label number as a part thereof or attached thereto. When, as here, the certification is presented on a separate sheet, that sheet must (1) **be signed** and (2) **fully identify and be securely attached to the paper or fee it accompanies**. Identification should include the serial number and filing date of the application as well as the type of paper being filed, e.g. complete application, specification and drawings, responses to rejection or refusal, notice of appeal, etc. If the serial number of the application is not known, the identification should include at least the name of the inventor(s) and the title of the invention.

NOTE: The label number need not be placed on each page. It should, however, be placed on the first page of each separate document, such as, a new application, amendment, assignment, and transmittal letter for a fee, along with the certificate of mailing by "Express Mail." Although the label number may be on checks, such a practice is not required. In order not to deface formal drawings it is suggested that the label number be placed on the back of each formal drawing or the drawings be accompanied by a set of informal drawings on which the label number is placed.

(Express Mail Certificate [8-3])

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: George T. Hunt

Serial No: 08/618,252

Group Art Unit: 3503

Filed: March 18, 1996

Examiner: Emmanuel Marcelo

For: TRACK SUPPORTED WINCH AND METHOD OF MAKING THE SAME

**PRELIMINARY AMENDMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the final Office Action mailed August 12, 1997, applicant proposes the following amendments and makes the following arguments:

**IN THE CLAIMS:**

1. (Amended) The method of forming a winch adapted to be supported on a track having a longitudinal axis, a base, and a pair of spaced longitudinally extending track hooks depending from the base in a common direction, each track hook having a flange spaced from the base, wherein the winch is slidably mounted on the track hook flanges, the method comprising the steps of:

(a) forming a flat elongated plate blank having a longitudinal axis, first and second spaced lateral sides, end regions and a central region, a pair of spaced notches defined in said blank first lateral side wherein said first lateral side defines a first track hook engaging lip intermediate said notches, an elongated slot defined in said blank central region substantially parallel to said longitudinal axis and spaced between said

lateral sides, said slot including a central portion of reduced width and end region openings of greater width than said slot central portion, said slot openings including recesses extending away from said first lateral side wherein a second lip is defined on said central region by said slot intermediate said slot openings extending toward said first slot, said slot openings being spaced from each other a distance equal to the spacing of said notches wherein pairs of said notches and slot openings are laterally aligned,

(b) bending said blank end regions in a common direction with respect to said central region along bend lines through laterally aligned pairs of notches and openings whereby said bent end regions define spaced winch supporting walls and said central region defines a winch base interconnecting said walls, portions of each of said laterally aligned pairs of notches and openings being [defined] located on each of said walls to provid[ing]e access to their associated lips in the direction of said blank longitudinal axis wherein said lips are adapted to be received upon the track hook flanges between the flanges and the track base to slidably interconnect[ing] said winch base and walls to the track, and

(c) mounting a rotatable windlass upon said walls.

4. (Amended) A winch adapted to be supported upon a track having spaced parallel hooks each having a flange wherein the winch includes a frame having a flat base and spaced walls extending therefrom, the base having first and second lateral sides and said walls being substantially perpendicular to and intersecting the base at corners, and a windlass rotatably mounted upon and extending between the walls, the



improvement comprising openings formed in the frame forming lips homogeneously defined on the frame base of the material thereof and adapted to receive the track flanges, and aligned pairs of openings defined in each of the walls at the corners thereof communicating with the lip-defining openings in the frame base whereby the track flanges are adapted to extend [therethrough] through the openings to permit[ting] said lips and winch frame to be slidably mounted on the track.

5. (Amended) In a winch as in claim 4 wherein said lips comprise first and second spaced parallel lips defined on the frame base, said lips having ends, said openings defined in the wall at the corners being in alignment with said lip ends and the [extended] longitudinal [projection] length of said lips.

### Remarks

Applicant respectfully requests reconsideration of the rejection in view of the foregoing amendments and following remarks.

The Examiner has rejected claims 5-7 under 35 U.S.C. 112, on the basis that the phrase "the extended longitudinal projection" in claim 5 lacks positive antecedent basis in the claim. Applicant has replaced "the extended longitudinal projection" with "the longitudinal length" to traverse this rejection.

The Examiner has repeated the rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over the acknowledged prior art in Figures 1 and 2 of the present application and the French '619 patent. Summarized, the Examiner's argument is that 1)

the multi-piece welded winch base of prior art Figures 1 and 2 discloses all of the structural recitations of the claims, except that it is not formed from a flat elongated blank; and 2) French '619 generally discloses a winch base folded from a single piece of metal, and "it would have been obvious to one of ordinary skill in the art to make the separate base plates of the acknowledged prior art [from] a monolithic piece by bending the end regions of a flat elongated plate, as taught by French '619".

Argument (1) is the Examiner's structural argument. Before addressing the Examiner's legal argument in favor of combination, applicant submits that the Examiner's structural argument for the §103 rejection is incorrect.

The entirety of the Examiner's analysis of the acknowledged prior art is:

"The acknowledged prior art discloses openings (24) formed in the frame forming lips (20) adapted to receive track flanges (38), and openings (24) defined in the walls (16) of the corners thereof whereby the track flanges (38) may extend therethrough permitting said lips (18, 20) and winch frame to be slidably mounted on the track (34), the lips comprise first (18) and second (20) parallel lips defined on the frame base, said lips (18, 20) having ends, said openings defined in the wall (16) of the corners being in alignment with said lip ends (18, 20) and the longitudinal projection of said lips.

First lip (18) is defined by the first lateral side of the base, a slot (22) defined intermediate the base sides (16), said slot defining the second lip (20), notches (24) defined in the base first lateral side (16) and the wall corners adjacent the base first lateral side (16), said notches defining said openings (24) in alignment with said first lip." Examiner's Final Office Action, pages 2-3.

The primary error in the Examiner's analysis is the comparison of the assembled multi-piece welded structure of prior art Figures 1 and 2 with applicant's claimed slot/notch/end region structure for a flat elongated blank as set forth in Figure 5. This is believed to be an improper hindsight comparison; if the Examiner were to compare the

pieces of prior art Figure 1, disassembled and laid flat, to the claimed flat elongated blank structure in claim 1 and best shown in Figure 5, it would be impossible to find the claimed notches, slots, lips, end regions and other specific structure which allows the flat blank to be folded into a functional winch base. Applicant submits herewith a drawing of the prior art multi-piece welded assembly of Figures 1 and 2, disassembled and laid flat, to illustrate this point.

Additionally, the Examiner's point-by-point listing of the prior art structural features does not follow the claimed structure of claim 1:

*"The acknowledged prior art discloses openings (24) formed in the frame forming lips (20)..."*. Openings 24 do not form lips 20. Openings 24 are simply notches in the side plates or walls 16; they do not "form lips" because they are part of a separate (non-lip forming) piece prior to assembly. In contrast, applicant's notches 54 in the claimed flat blank (see Figure 5) do form lip 56.

*"...And openings (24) defined in the walls (16) of the corners thereof whereby the track flanges (38) may extend therethrough...."* Prior art Figures 1 and 2 show only a single opening 24 in each wall 16; there is no corresponding opening in any portion of the winch base for the second of the two parallel hooks on an LL track. Applicant has amended claims 1 and 4 to clarify the fact that each side wall 16 has plural openings, one for each flange of the LL track.

*"...The lips comprise first (18) and second (20) parallel lips defined on the frame base, said lips (18, 20) having ends, said openings defined in the wall (16) of the corners being in alignment with said lip ends (18, 20) and the longitudinal (length) of said lips."*

This apparently refers to claim 5. However, the “ends” of lips 18, 20 in prior art Figures 1 and 2 extend laterally past and overhang the sidewalls 16 and openings 24, and are not “in alignment” with the openings as claimed. Applicant’s claimed openings define the lips; openings 24 in prior art Figures 1 and 2 do not.

*“The first lip (18) defined by the first lateral side of the base....”* This apparently refers to claim 1, but only holds true for the multi-piece welded assembly of prior art Figures 1 and 2 with a hindsight reconstruction of applicant’s invention and further by ignoring the “flat elongated plate blank” language of claim 1, since it is impossible to define a “first” lateral side of “the” base in the prior art until the separate pieces are welded together. It also ignores the requirement in claim 1 that the first lip be defined, not only by the first lateral side of the base, but “intermediate” a pair of “spaced notches” defined in the first lateral side. Prior art Figures 1 and 2 does not have such notches; it doesn’t need them, because it is a multi-piece assembly, and is not a unitary blank which can be folded to form a base.

*“...A slot (22) defined intermediate the base sides (16), said slot defining the second lip (20)....”* Again, the prior art can only be considered to have “a slot 22 defined intermediate the base sides” based on a hindsight reconstruction after the pieces have been welded together. Even then, this does not meet the language of claim 1, which recites that the slot is defined “intermediate said openings”, not merely “the base sides” as argued by the Examiner. This is a tangible structural difference which the Examiner’s rejection overlooks. Moreover, the Examiner’s proposed “slot 22” in the prior art does not “define the second lip”; and again, applicant’s claimed second lip is defined by a slot

"intermediate said openings".

"...Notches (24) defined in the base first lateral side (16) and the wall corners adjacent the base first lateral side (16)...." At this point, the Examiner has used the same reference numeral (24) to "find" three different pieces of applicant's claimed structure in the prior art: "openings (24) formed in the frame forming lips (20)"; "openings (24) defined in the walls (16) of the corners thereof"; and "notches (24) defined in the base first lateral side (16)." Prior art Figures 1 and 2 simply has no "notches" as claimed by applicant in claim 1, and it is improper for the Examiner to apply a single piece of prior art structure 24 in three different ways for the rejection.

Based on the supposed structural identity between the assembled multi-piece winch base of prior art Figures 1 and 2 and applicant's claimed invention (now shown to be incorrect), the Examiner has cited the French '619 patent and several cases (*Detroit Stove Works, in re Keller, in re Preda*) for the proposition that it would have been obvious to "make the separate base plates of the acknowledged prior art of a monolithic piece by bending the blank end regions of a flat elongated plate...." Applicant's invention, however, is not merely the formation of the various pieces of prior art Figures 1 and 2 into a "monolithic piece" and bending it, because that hindsight approach does not result in the claimed invention. Instead, applicant has invented a new structure which lends itself to forming a winch base by bending a flat plate blank. The Examiner's argument that applicant has merely taken a multi-piece structure and formed it from one piece is therefore not supportable, and cases such as *Detroit Stove Works* do not warrant the §103 rejection. For example, in the *Detroit Stove Works* case, a stove for burning one

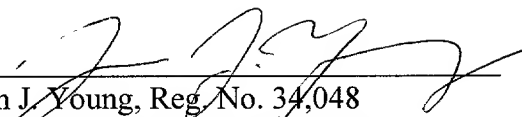
type of fuel, which was normally formed in two pieces, was formed from a single piece in order to burn a hotter type of fuel. There were no structural changes made other than forming the multi-piece structure as a single, integrally cast piece. This is not what applicant has done with the present invention in view of the prior art in Figures 1 and 2. By analogy, in order to allow the manufacture of a one-piece "stove", applicant has come up with an entirely new physical structure which lends itself to one-piece manufacture.

As for the Examiner's other cases, cited for the general proposition that the test for combining references is not what first one and then the other reference discloses individually, applicant points out that the structural differences shown above between the invention and the prior art, *taken as a whole*, are enough to show that the invention is more than an ordinary skill inference drawn from the general prior art teachings that a winch base can be made from a single folded piece as in French '619. More than such an inference is required to come up with the novel notch/opening/slot/fold line structure claimed in claims 1 and 4 and shown in Figure 5.

Applicant therefore submits that the rejection of claims 1-7 under 35 U.S.C. §103 is traversed. Applicant has made a number of amendments to the claims to improve clarity throughout, and to emphasize some of the differences argued above, differences which are already in the claims but perhaps not as clear as they could be.

If the Examiner has any questions about this amendment, he is invited to contact applicant's undersigned attorney at (313) 662-0270 or (248) 649-3333.

Respectfully submitted,

  
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Dated: 11-11-97

Applicant or Patentee: Benny J. Driver Attorney's  
Serial or Patent No: \_\_\_\_\_ Docket No.: 9501  
Filed or Issued: \_\_\_\_\_  
For: TRACK SUPPORTED WINCH AND METHOD OF MAKING THE SAME

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY  
STATUS [37 CFR 1.9(d) AND 1.27(c)] - SMALL BUSINESS CONCERN**

I hereby declare that I am

- ☐ the owner of the small business concern identified below:  
☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: KINEDYNE CORPORATION

ADDRESS OF CONCERN: 151 Industrial Parkway, P.O. Box 5207  
North Branch, NJ 08876-1302

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 18 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled TRACK SUPPORTED WINCH AND METHOD OF MAKING THE SAME by inventor(s) BENNY J. DRIVER described in

- ☒ the specification filed herewith  
☐ application serial no. \_\_\_\_\_, filed \_\_\_\_\_  
☐ patent no. \_\_\_\_\_, issued \_\_\_\_\_

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
☐ Individual ☐ Small Business Concern ☐ Nonprofit Organization

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
☐ Individual ☐ Small Business Concern ☐ Nonprofit Organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING: James M. Klausmann  
TITLE OF PERSON OTHER THAN OWNER: President  
ADDRESS OF PERSON SIGNING: 151 Industrial Parkway  
North Branch, NJ 08876-1302

SIGNATURE: James M. Klausmann  
(Signature of Company Officer)

DATE: 10/20/95



